



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**District Court**

**[2023] NZDT 230**

**APPLICANT      TS**

**FIRST              C Ltd  
RESPONDENT**

**SECOND          IQ & LQ  
RESPONDENT**

**The Tribunal orders:**

C Ltd is to pay directly to TS the sum of \$1,469.10 on or before 26 May 2023.

**Summary of Reasons:**

[1] The hearing was convened by teleconference. Only the applicant and IQ & LQ appeared at the hearing. When I called C Ltd (**C**) on the number advised, including the telephone number provided by C in its email of 10 March 2023, the calls went straight to voice mail several times. I am satisfied C has been properly notified of the hearing, and therefore I will proceed to consider the claim in their absence.

**Background**

[2] The applicant made a booking with C to holiday rent IQ & LQ's property at [Town] for one week in late December 2023. The booking was made in early 2022. The rental cost was agreed at \$5,317.00, approximate \$500 per night plus booking and cleaning costs. The applicant paid \$1,889.10 directly to C. All communication was between the applicant and C and C did not provide the applicants with IQ & LQ's name or contact details.

[3] By late September 2022 the applicant realised he and his family would be unable to take up the booking and contacted C to cancel the contract. On 3 October C accepted the cancellation and refunded the cleaning cost, \$121.00 but retaining the booking fee and accommodation deposit.

**Issues**

- i) Who are the contracting parties
- ii) Is the applicant entitled to any refund from C
- iii) Is the applicant entitled to any refund from IQ & LQ

## Issue 1

[4] The applicant is clear that his dispute is with C. He considers C the contracting party and has only named IQ & LQ as he was advised to do so by the previous referee and C's terms and conditions imply the money paid, other than the booking fee had been on paid to IQ & LQ who had a discretion on whether or not they refund the accommodation costs.

[5] As stated above, C has not appeared at hearing nor provided any evidence in defence of this application despite acknowledging the claim by email on 10 March 2023.

[6] I understand C may consider itself an agent for property owners when advertising and letting out properties, however I am not persuaded C is acting as an agent in this case. C contracts with property owners to let their properties, it has exclusive contracts and the owners are unable to let their properties without using C's services. C controls the entire rental process and takes service fees and commissions directly from the renter not the property owner. No commission or service fee is paid by the property owner. IQ & LQ tell me, C sets the rental price and the cost of any additional services such as cleaning which C pay directly.

[7] C has not provided any evidence or asserted to the Tribunal that it was only acting as IQ & LQ agent in this case. I am persuaded on the evidence that C is the principle in the rental agreement enter into by the applicant and therefore is the contracting party in this case.

## Issue 2

[8] Again, as stated above C has not provided any evidence, but the applicant has provided C's terms and conditions. These terms are confusing, contradictory, and possibly unfair. The Tribunal does not have jurisdiction under the Fair Trading Act 1986 (**FTA**) to declare C's terms for booking properties through its site are unfair, however the Tribunal does have jurisdiction to find its terms in this instance are misleading.

[9] After carefully reviewing the evidence presented by the applicant and rereading the published terms several times, I am persuaded C's terms and conditions are in breach of the Fair Trading Act in that they are misleading and deceptive, specifically the terms and conditions contained in the clauses concerning the consumer's rights to cancel their booking or receive a refund. Not only are these terms difficult to understand, C has also failed to adequately disclose or explain these terms and conditions at the time the contract was entered into.

[10] C may assert that the deposit is virtually non-refundable under these terms and conditions<sup>1</sup> and I accept on some reading this could be its position, but the terms could equally be read as allowing C to only retain the booking fee and any refund of the accommodation costs is at the owner's discretion. C goes so far as to offer to assist a renter to recover some if not all of this cost in the event of cancellation but has offered no assistance in this case. The applicant identified the owners himself for the purposes of this claim without any assistance from C despite the Tribunal order of 14 March 2023.

[11] Given this I am persuaded C is liable to compensate the applicant for any losses or damages suffered as a result of its unclear and confusing terms. I am satisfied the applicant is entitled to a return of the deposit paid minus the cleaning fee already refunded, \$121. I also accept C is not liable to refund the \$214 that was paid to IQ & LQ.

---

<sup>1</sup> Though as stated C has not provided any evidence on this.

[12] Whereas C may have been entitled to retain its booking fee, \$299 under the contract, I am not persuaded it is entitled to this fee in this instance as it has not provided a professional service to the applicant by providing confusing terms of cancellation and then refusing to assist the applicant in recovering any of the accommodation costs already paid or in participating in the Tribunal despite its clear knowledge of the claim. I also note that on IQ & LQ's evidence, C relet the property for the same period for 5 of the 7 days and presumably was paid both a further booking fee and accommodation commission for most of the cancelled period, leading to very little if any loss to C. In essence C seems to be attempting to retain a windfall profit by claiming further booking fees and commission for the same period reducing their actual loss due to the cancellation to a negligible amount.

[13] The applicant is entitled to a refund of \$1,554.10 from C. However, as he has only claimed \$1,469.10 in his Tribunal application, he is limited to this amount.

### **Issue 3**

[14] I accept IQ & LQ's evidence that they have only been paid \$214 by C under the hire agreement. I also accept that whereas the applicant booked the property for 7 days before he cancelled the rental, they were only able to relet the property for 5 days during the same period leading to a loss of approximately \$800.00 once the \$214 payment is taken into account.

[15] Given this, and that the applicant has already been awarded the maximum under this application as filed, I am satisfied IQ & LQ are not liable to repay any accommodation costs. I note the applicant agreed at hearing that this was a fair outcome and was no longer making any claim against IQ & LQ.

**Referee: Hannan DTR  
2023**

**Date: 2 November**



## Information for Parties

### Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

### Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

### Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

### Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.